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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5808 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ALPESH GOPAL CHHARA

Versus

POLICE COMMISSIONER

Appearance:

MR RD GAGDEKAR for Petitioner

RULE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 11/02/2000

ORAL JUDGEMENT

The detenu has moved this application under Article 226 of the Constitution of India as he has been detained by an order made by the Detaining Authority, respondent no.1 herein on 12.6.1999 vide Annexure A. The said order has been made under the provisions of The Gujarat Prevention of Anti-social Activities Act, 1985.

2. The grounds of detention disclosed that the detenue was indulging in anti-social activities and was described as a dangerous person. He was indulging in offences of theft. He used to remove the luggage of the passengers from the ST buses. It is also indicated that he is such a dangerous person that the passengers were not in a position to lodge a complaint against him. The instances are mentioned in detail. However, the same are not required to be considered in detail in the instant case. It is required to be noted that in the instant case, neither the Detaining Authority, nor the State Government has filed affidavit in reply. Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 reads as under:-

"3. (1) The State Government may if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct that the District Magistrate or the Commissioner of Police, may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section.

(3) When any order is made under this section by an authorised officer he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall

remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government."

There is no affidavit in reply. Looking to the fact that the Learned Advocate did not remain present in the morning session and even in the second session, under the circumstances, considering the facts, it was thought fit to appoint an Advocate and accordingly Mr.D.M.Thakker, Learned Advocate of this Court was appointed to argue on behalf of the detenu. After going through the papers, he pointed out that there was breach of Section 3 of the aforesaid act. It is the duty of the Authorised Officer when an order is made to forthwith report about the fact of detention to the State Government together with the grounds of which the order is made. In the instant case, no such report has been made. In absence of affidavit, Ld. Asst. Government Pleader was also not in a position to state that whether the same has been complied with or not.

3. Apart from the fact that there are certain averments i.e. the representation not considered. In view of the fact that there is non-compliance with the provision of Section 3, the continued detention is required to be held to be bad and illegal and the detenu is ordered to be released forthwith if not required in any other case.

4. An amount of Rs.750/- shall be paid to the Learned Advocate from the funds of the Legal Aid Committee by the Legal Aid Committee. The said amount has been deposited by the Learned Advocates of this Court. The Registry is directed to make the payment at the earliest.

5. The petition is allowed. Rule is made absolute. No order as to costs.

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